No. 828555

SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent,
v.
JOSE MONTANO, Petitioner

PETITIONER JOSE MONTANO'S SUPPLEMENTAL BRIEF

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Please refer to the facts set out in petitioner's respondent's brief.

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I. According to Burke, Under The Intimidating A Public Servant Statute, RCW 9A.76.180, A "Threat" By Itself Cannot Be Considered An Attempt To Influence A Public Servant's Vote, Opinion, Decision, Or Other Official Action As A Public Servant?

1. THE FACTS IN BURKE ARE SIMILAR TO THE FACTS IN MONTANO.

In State v. Burke, 132 Wn.App. 415, 132 P.3d 1095 (2006), the defendant was convicted of assault in the third degree, and intimidating a public servant. Officer Billings was called to a house party in the early morning hours, where there appeared to be numerous underage drinkers

outside the front of the residence. State v. Burke, 132 Wn.App. 415, 416-417, 132 P.3d 1095 (2006) Billings chased them into the house, where the lessee, Juliet Gaines got into a shouting match with Billings. Gaines was angry because she insisted that Officer Billings didn't have permission to be in the house and that he needed a warrant. Id. at 417

Billings went outside, in the back of the house, onto the back deck. Burke, at 417. Gaines continued screaming at Billings on the back deck. Id. Some of the young looking partiers ran off. Id. However, there were approximately 50 people with beer bottles on the deck who became angry and started yelling profanities at Billings. Id. Billings did not attempt to chase the partiers that left. Id. Feeling outnumbered, Billings tried to leave, but the crowd closed in around him preventing him from leaving. Id. Billings yelled at the crowd to back off, to protect himself. Id.

At trial, Burke testified that he was drunk, and that when he first noticed Billings, he thought, "Uh-oh, the party's over." Burke at 418. Burke then moved closer to hear what Billings and Gaines were talking about. Id. He heard Billings and Gaines talk about the underage drinkers. Id. Burke testified that he was disappointed that the party might be over, but not angry. Id.

At that point, Burke charged the officer, belly bumping him, and nearly knocking the officer off of his feet. State v. Burke, 132 Wn.App. 415, 417, 132 P.3d 1095 (2006). The officer pushed Burke back. Id. Billings testified that the Burke's demeanor was "enraged." Id. Burke yelled profanities and fighting threats at Billings, although the Billings couldn't remember the exact words used. Id. at 417-418. Burke then got into a fighting stance with closed fists, while standing a mere two feet away. Id. at 418. Burke then took a swing at Billings with a closed fist. Id. Billings parried the punch, and in the same motion turned Burke around, and pushed him through the crowd and off of the deck. Id. Billings struggled with Burke, and then finally handcuffed him. Id.

2. THE MONTANO COURT'S INTEPRETATION OF BOTH THE FACTS AND THE LAW IN BURKE WERE INCORRECT.

The Montano Court stated the following:

"However, we think there is a significant distinction between this case and Burke. Unlike the situation in Burke, here the officer was undertaking an official action at the time of the threats. He had arrested Mr. Montano and was taking him to jail when the threats began. The threats continued during transport. This is in stark contrast to Burke where the officer had abandoned his pursuit of the suspects and was simply trying to leave the scene." State v. Montano, 147 Wash.App. 543, 548, 196 P.3d 732 (2008).

Mr. Montano respectfully disagrees with the Montano Court with regards to the officer in Burke abandoning "his pursuit of the suspects

and was simply trying to leave the scene." State v. Montano, 147 Wash.App. 543, 548, 196 P.3d 732 (2008). Officer Billings was still performing his duties as a police officer when Burke confronted him. Officer Billings was still investigating underage drinking at the house party, when he found himself in the middle of a dangerous situation: 50 drunken people armed with beer bottles. State v. Burke, 132 Wn.App. 415, 417, 132 P.3d 1095 (2006). The Burke Court never referenced any testimony from Officer Billings that he had abandoned his investigation, i.e. his official action. Trying to stave off 50 drunks armed with beer bottles while conducting an investigation qualifies Officer Billings as still acting within his official capacity as a police officer. Throughout the entire encounter with Burke, Billings was taking official action as a police officer.

The Montano Court stated in its opinion that in Burke, "the officer had abandoned his pursuit of the suspects and was simply trying to leave the scene." State v. Montano, 147 Wash.App. 543, 548, 196 P.3d 732 (2008). That is incorrect. The Burke Court never stated or implied that their decision in reversing the intimidating a public servant charge had anything to do with Officer Billings abandoning his pursuit of suspects and trying to leave, because that was not the reason for the

reversal in Burke. The Burke Court stated that the reason for the reversal was that there was no connection as to the threats made by Burke, with regard to Burke trying to influence Billings in his official action as a police officer. State v. Burke, 132 Wn.App. 415, 421, 132 P.3d 1095 (2006).

3. THE MONTANO COURT'S HOLDING OPPOSES THE HOLDING IN BURKE.

The conflict between the Montano Court and the Burke Court is the following: If a public servant is on duty and a threat is made to that public servant, the Montano Court's assumption is that probable cause can always be found, because the person making the threat could always be perceived to be trying to influence the official action of the public servant, even though the only evidence of attempting to influence the official action of the public servant was the threat. State v. Montano, 147 Wash.App. 543, 548-549, 196 P.3d 732 (2008).

The Burke Court's perspective differs from that of the Montano Court: When a public servant is on duty, and a threat is directed at that public servant, the threat itself is not enough to show that an attempt was made to influence an official action of that public servant. State v. Burke, 132 Wn.App. 415, 422, 132 P.3d 1095 (2006).

The Burke Court held that there needs to be some type of connection between the threat, and the official action of a public servant. The public servant being on duty coupled with a naked threat isn't enough to get you probable cause for intimidating a public servant in the Burke Court, although it satisfies the Montano Court.

Thus, in both Burke and Montano, both officers were performing their official duties when the threats occurred: The officer in Burke was investigating an underage drinking party; the officer in Montano was completing an arrest. However, the Burke Court's holding does not allow a finding of probable cause when a person only makes a naked threat to a public servant.

4. NAKED THREATS DIRECTED AT A POLICE OFFICER ARE NOT ENOUGH TO VIOLATE THE INTIMIDATING A PUBLIC SERVANT STATUTE.

Naked threats directed towards a police officer is not enough to violate the intimidating a public servant statute. The Burke court stated the following, "But threats are not enough; the defendant must attempt to influence the public servant's behavior with these threats." State v. Burke, 132 Wn.App. 415, 422, 132 P.3d 1095 (2006) (citing State v. Stephenson, 89 Wn.App. 794, 807, 950 P.2d 38 *review denied,* 136 Wash.2d 1018, 966 P.2d 1277 (1998).

The Burke court reversed Burke's intimidating a public servant conviction. State v. Burke, 132 Wn.App. 415, 423, 132 P.3d 1095 (2006). The Burke court stated that while the initial contact with Burke and the fighting stance was substantial evidence that a threat existed, there was no direct evidence that Burke tried to influence Billings. Id. at 421 The Burke court stated that the physical attack and threats were not an attempt to communicate that the officer take a certain course of action, and that simple anger does not imply an attempt to influence. Id. at 422 "Evidence of anger alone is insufficient to establish intent to influence Billing's behavior. The state must show that Burke's anger had some **specific purpose** to make Billings do or not do something." Id. at 422 (emphasis added).

In the present case, statements like, "I'll be waiting until you get off of work" and "I'll kick your ass" can be viewed as a threat. CP 18. However, according to Burke, that would not be enough to satisfy all of the elements of the intimidating a public servant statute. Threatening words by themselves do not violate the statute: There must be an attempt by the respondent to influence the official action of the police officer. Burke at 422 (citing State v. Stephenson, 89 Wn.App. 794, 807, 950 P.2d 38 *review denied,* 136 Wash.2d 1018, 966 P.2d 1277 (1998).

II. If A Threat By Itself Is Insufficient To Be Considered An Attempt To Influence A Public Servant's Vote, Opinion, Decision, Or Other Official Action As A Public Servant, A Court Can Dismiss The Charge For Insufficiency Of Evidence Under A Knapstad Motion.

1. THE MONTANO COURT'S HOLDING WOULD IN EFFECT, NO LONGER ALLOW SUFFICIENCY ARGUMENTS TO BE MADE WITH REGARD TO THE INTIMIDATING A PUBLIC SERVANT STATUTE, AND THUS, ALLOW THE STATE TO GO FORWARD WITH THE WEAKEST OF CASES, UNCHECKED.

Mr. Montano never attempted to influence Officer Smith from doing his job. Mr. Montano was angry, but similar to Burke, there was no evidence that he was trying to influence Officer Smith from doing or not doing his official duty.

However, the Montano Court stated the following:

"We believe a rational trier-of-fact could infer that Mr. Montano's threats were designed to get the officer to change his course of action even if there was no explicit "I will attack you unless you release me" statement. The threats began when the officer took Mr. Montano into custody and continued throughout the transportation process until the officer turned him into the jail. Because of the temporal proximity of the threats and the arrest, it would be permissible for the trier-of-fact to draw the conclusion that the threats were an attempt to influence the action the officer was then undertaking." State v. Montano, 147 Wash.App. 543, 548, 196 P.3d 732 (2008).

This is in direct conflict with the Burke Court, which stated:

"...evidence of anger alone is insufficient to establish intent to influence Billing's behavior. The State must show that Burke's anger had some **specific purpose** to make Billings do or not do something."

State v. Burke, 132 Wn.App. 415, 422, 132 P.3d 1095 (2006)(emphasis added); and "But threats are not enough; the defendant must attempt to influence the public servant's behavior with these threats." Id. (citing State v. Stephenson, 89 Wn.App. 794, 807, 950 P.2d 38 *review denied,* 136 Wash.2d 1018, 966 P.2d 1277 (1998).

The jury found Burke guilty of intimidating a public servant. However, the Burke Court reversed that decision. State v. Burke, 132 Wn.App. at 422. The Burke Court required that the State show how Burke's anger had some specific purpose in making Billings do or not do something, and that threats alone were not enough. Id.

The Grant County Superior Court dismissed the intimidating a public servant charge against Mr. Montano in a knapstad motion (CP 28) for the same reason that the Burke Court reversed Burke's conviction: The State did not show any specific purpose that the threats Mr. Montano made had influenced an official action of the police officer. RP at 9, LN 18-22, 4/17/07. However, the Montano Court does not require that any **specific purpose** be shown. State v. Montano, 147 Wash.App. 543, 548-549, 196 P.3d 732 (2008). (emphasis added)

Unlike the Burke Court, the Montano Court has ruled that if you make a threat, that alone can be all that is necessary for a jury to determine that a defendant was trying to influence the official action of a

police officer. State v. Montano, 147 Wash.App. 543, 549, 196 P.3d 732 (2008). The Montano Court stated the following:

"It is, of course, also possible that the trier-of-fact will determine that Mr. Montano was simply angry and vented that anger during the arrest process without attempting to influence the officer's official actions. Indeed, the repeated threats and statements without an express request for the officer to release him tend to suggest simple anger was all that was involved. That decision, however, is one left to the trier-of-fact. Viewed in a light most favorable to the prosecution, there is evidence, "however weak,"2 from which a trier-of-fact could find Mr. Montano intended to influence Officer Smith's official actions. Under Knapstad, the trial court erred in deciding what inference was to be drawn from the evidence." Montano at 548-549.

Mr. Montano respectfully disagrees with the Montano Court's ruling that "Under Knapstad, the trial court erred in deciding what inference was to be drawn from the evidence. Montano at 549.

The jury decided that Burke was guilty of intimidating a public servant, given the threats he made and the anger that he showed toward the officer. The jury connected the dots: Threats + anger = attempt to influence. Yet, the Burke Court reversed the trier of facts decision. This was because the Burke Court decided that in situations where there was only anger and threats of harm, but no direct evidence that an attempt was made by the defendant to influence a public servant in his official duty, it wasn't enough to prove the element of influence, and thus, there

wasn't enough evidence to sustain a conviction for intimidating a public servant. State v. Burke, 132 Wn.App. 415, 132 P.3d 1095 (2006).

The Grant County Superior Court applied the holding of Burke, when dismissing the intimidating a public servant charge during a knapstad hearing. The holding in Burke sets the standard for sufficiency arguments in intimidating a public servant cases. From that holding, you can conclude that a dismissal from a knapstad motion is permissible.

2. THE SUFFICIENCY STANDARD THAT IS IN EFFECT FOR DRUG CASES IS THE SAME STANDARD THAT SHOULD BE USED FOR INTIMIDATING A PUBLIC SERVANT CASES.

If the Montano Court had its way, there would be no such thing as a knapstad motion or sufficiency arguments for intimidating a public servant cases, or any cases for that matter. The Montano Court would allow the prosecution to go to trial on cases with little to no evidence, and allow them to throw whatever mud they can at the wall to see if it will stick.

An example of a sufficiency standard that is similar to the present case is the one used for possession of controlled substance/intent to deliver cases. Mere possession of a large quantity of a controlled substance is not in and of itself enough evidence to sustain a charge of intent to deliver. State v. Zunker, 112 Wash.App. 130, 135, 48 P.3d 344

(2002); State v. Campos, 100 Wash.App. 218, 222, 998 P.2d 893 (2000). Washington State Courts have ruled that "cases in which intent to deliver was inferred from possession of narcotics all seem to involve at least one additional factor." State v. Darden, 145 Wash.2d 612, 625, 41 P.3d 1189 (2002).

The additional factor may not be things like nervousness, giving a false name, flight, etc. While they may imply guilt, it is not clear whether the guilt is attributed to the crime of possession, or the crime of intent to deliver. State v. Hagler, 74 Wash.App. 232, 236, 872 P.2d 85 (1994). "The additional factor must be suggestive of sale as opposed to mere possession in order to provide substantial corroborating evidence of intent to deliver." Id. at 236. Without two or more of these additional factors, the State is free to inflate any simple possession of a controlled substance into a possession with intent to deliver case. State v. Brown, 68 Wn.App. 480, 485, 843 P.2d 1098 (1993).

The same danger of inflating a possession charge to an intent to deliver charge will occur in an intimidating a public servant case if this Court agrees with the Montano Court: Inflating harassment, a gross misdemeanor, to intimidating a public servant, a class B felony.

3. WHEN ONLY A NAKED THREAT IS PRESENT, THE PROPER CHARGE IS HARASSMENT, NOT INTIMIDATING A PUBLIC SERVANT.

The pertinent section of the harassment statute, RCW 9A.46.020 states the following:

1) A person is guilty of harassment if:
(a) Without lawful authority, the person knowingly threatens:
(i) To cause bodily injury immediately or in the future to the person threatened or to any other person; or
(b) The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out. "Words or conduct" includes, in addition to any other form of communication or conduct, the sending of an electronic communication.
(2)(a) Except as provided in (b) of this subsection, a person who harasses another is guilty of a gross misdemeanor.

Compare that to the pertinent section of the intimidating a public servant statute, RCW 9A.76.180, which states:

1) A person is guilty of intimidating a public servant if, by use of a threat, he attempts to influence a public servant's vote, opinion, decision, or other official action as a public servant.

When looking at a case where a threat has been made to cause harm to a person, harassment is the proper charge for the state to make. Mr. Montano made the following threats to Officer Smith: "I know when you get off work, and I will be waiting for you;" "I'll kick your ass;" "I know you are afraid, I can see it in your eyes;" "punk ass." CP 18.

Harassment would be the proper charge in Mr. Montano's case, because "without lawful authority, the person knowingly threatens: (i) to cause bodily injury immediately or in the future to the person threatened..." It's an exact fit, unlike the intimidating a public servant statute, where you not only have to make a threat, but have to attempt to influence an official action of the police officer.

The effect of the Montano Court's ruling is that it bypasses the use of a harassment charge, whose facts are a perfect fit, and instead chooses to allow the trier of fact to become a mind reader as to whether Mr. Montano was attempting to influence the officer's decision to arrest him, when he made naked threats to Officer Smith. The harassment statute does not reference the intimidating a public servant statute when the threat has been made to a public servant. Thus, there is no legislative intent shown within the harassment statute that would indicate that if a threat by itself is made to a public servant, that the intimidating a public servant statute should be used instead of the harassment statute.

The Burke Court's holding sets the standard for sufficiency questions for the intimidating a public servant statute, and effectively

takes the guess work out of the intimidating a public servant statute by stating:

"evidence of anger alone is insufficient to establish intent to influence Billing's behavior. The State must show that Burke's anger had some **specific purpose** to make Billings do or not do something." State v. Burke, 132 Wn.App. 415, 422, 132 P.3d 1095 (2006)(emphasis added).

4. EXTORTION CASES ARE SIMILAR IN NATURE TO INTIMIDATING A PUBLIC SERVANT, YET IN THE PUBLISHED APPELLATE CASES IN WASHINGTON STATE, A NAKED THREAT IS NOT ENOUGH TO GET AN EXTORTION CONVICTION.

Extortion is similar to intimidating a public servant in the sense that for both charges, a threat is made and the person making the threat is attempting to influence the victim into doing something. However, in the few extortion cases that have been published in Washington State, the attempt to influence the victim has been more than just a naked threat itself.

In Hansford, the defendant was convicted of attempted extortion when he was discovered inside a residence wearing plastic gloves and having a nylon stocking pulled over his face. State v. Hansford, 22 Wn.App. 725, 726, 591 P.2d 482 (1979). He also was armed with a sawed off shotgun. Id. When he was searched, the police found a note stating:

"We would like you to do what you are told. And nothing will happen to any member of your family, do you understand? $350,000 is the price for your family. You will receive instructions." State v. Hansford, 22 Wn.App. 725, 726, 591 P.2d 482 (1979).

In Garvin, the defendant was employed as a personnel representative for Lockheed Shipbuilding. State v. Garvin, 28 Wn.App. 82, 83, 621 P.2d 215 (1980). Using his supervisory position as a means to influence several employees, Garvin threatened to fire several employees unless they paid him off. Id.

In Taylor, the defendant told Chase that "his business was hurting others and if Chase didn't close down and leave town in 10 days, he (Chase) was dead." State v. Taylor, 30 Wn.App. 89, 91, 632 P.2d 892 (1981).

In Stockton, the defendant wrote two letters to the victim: One letter stated that the victim could prevent a murder if she accompanied the defendant to his psychiatrist; the second letter stated different ways that the victim and her husband might be killed if she did not agree to providing sexual favors. State v. Stockton, 92 Wn.2d 528, 529, 647 P.2d 21 (1982).

In Martinez, the defendant beat the victim and demanded that she sign over title of her vehicle to him, and threatened "to cause E.L. bodily

injury in the future if she did not sign over her car." State v. Martinez, 76 Wn.App. 1, 3, 6, 884 P.2d 3 (1994).

In Pauling, after the defendant had already sent nude photos of the victim to the victim's family and friends, the defendant threatened to continue sending nude photos to her family and friends. State v. Pauling 149 Wn.2d 381, 384, 69 P.3d 331 (2003).

In all of these extortion cases, a threat was made, and then a condition was spelled out by the defendant to the victim. There were no situations where there was only a naked threat, and no condition following the threat. Structurally, intimidating a public servant is very similar to extortion: It's basically extortion of a public servant. However, under extortion, a naked threat alone would not be enough to get a conviction. The same standard should be used for intimidating a public servant.

5. THE MONTANO COURT'S THRESHOLD OF WHAT CONSTITUTES INTIMIDATING A POLICE OFFICER SHOULD BE HIGHER, AS A POINT OF PUBLIC POLICY.

Mr. Montano was arrested for a gross misdemeanor and a misdemeanor, relatively minor offenses in the world of criminal offenses. CP 18-19. The misdemeanors were the underlying cause of the arrest. CP 18-19. The intimidating a public servant charge came after

Mr. Montano was arrested. CP 18-19. The Montano Court's interpretation of intimidating a public servant would lower the threshold for defendants getting charged with a class B felony, when the underlying charge was a misdemeanor. Defendants that are arrested for misdemeanor charges could now be facing significant jail/prison time and a felony charge, for making a threat as they are being arrested.

Police officers are trained to diffuse stressful situations. The expectation of a police officer is that part of the job is dealing with verbal abuse. Police officers have made an implied compact that they will be tolerant of a certain amount of verbal abuse. They deal with an array of difficult people on a daily basis: People that are high/intoxicated; mentally ill; frightened, or embarrassed because they were arrested.

In effect, the Montano Court ruling allows there to be a zero tolerance policy for any threatening words when people are being arrested, even though when someone is arrested, they are typically in a stressful, vulnerable position, and are not necessarily thinking clearly.

When taking into consideration an intimidating a public servant charge, there should be some latitude for defendants at the point of arrest and while they are being taken to the county jail. Not every word that

comes out of a defendant's mouth at the point of arrest should be automatically considered an attempt influence a decision by a police officer. Most people that are arrested are not going to be charged with a felony. They are going to be charged with misdemeanors or infractions. By having a zero tolerance policy, there will be a greater chance that police contact of minor consequence will now turn into a class B felony. Threats made at the point of arrest and when a defendant is being taken to jail are more of an emotional type of response, and should not be treated as a class B felony.

D. CONCLUSION

Mr. Montano respectfully requests the Court to reverse the appellate court and dismiss the intimidating a public servant charge.

Respectfully Submitted,

Jeff Goldstein

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Attorney for Petitioner

APPENDIX

APPENDIX - A

RCW 9A.56.120
Extortion in the first degree.

(1) A person is guilty of extortion in the first degree if he commits extortion by means of a threat as defined in *RCW 9A.04.110(25) (a), (b), or (c).

(2) Extortion in the first degree is a class B felony.

[1975 1st ex.s. c 260 § 9A.56.120.]

Notes:

***Reviser's note:** RCW 9A.04.110 was amended by 2005 c 458 § 3, changing subsection (25) to subsection (26); and was subsequently amended by 2007 c 79 § 3, changing subsection (26) to subsection (27).

APPENDIX - B

RCW 9A.56.130
Extortion in the second degree.

(1) A person is guilty of extortion in the second degree if he or she commits extortion by means of a wrongful threat as defined in *RCW 9A.04.110(25) (d) through (j).

(2) In any prosecution under this section based on a threat to accuse any person of a crime or cause criminal charges to be instituted against any person, it is a defense that the actor reasonably believed the threatened criminal charge to be true and that his or her sole purpose was to compel or induce the person threatened to take reasonable action to make good the wrong which was the subject of such threatened criminal charge.

(3) Extortion in the second degree is a class C felony.

[2002 c 47 § 2; 1975 1st ex.s. c 260 § 9A.56.130.]

Notes:

***Reviser's note:** RCW 9A.04.110 was amended by 2005 c 458 § 3, changing subsection (25) to subsection (26); and was subsequently amended by 2007 c 79 § 3, changing subsection (26) to subsection (27).

Intent -- 2002 c 47: "The legislature intends to revise the crime of extortion in the second degree in response to the holding in *State v. Pauling*, 108 Wn. App. 445 (2001), by adding a requirement that the threat required for conviction of the offense be wrongful." [2002 c 47 § 1.]

APPENDIX - C

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RCW 9A.04.110
Definitions.

In this title unless a different meaning plainly is required:

(1) "Acted" includes, where relevant, omitted to act;

(2) "Actor" includes, where relevant, a person failing to act;

(3) "Benefit" is any gain or advantage to the beneficiary, including any gain or advantage to a third person pursuant to the desire or consent of the beneficiary;

(4)(a) "Bodily injury," "physical injury," or "bodily harm" means physical pain or injury, illness, or an impairment of physical condition;

(b) "Substantial bodily harm" means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part;

(c) "Great bodily harm" means bodily injury which creates a probability of death, or which causes significant serious permanent disfigurement, or which causes a significant permanent loss or impairment of the function of any bodily part or organ;

(5) "Building", in addition to its ordinary meaning, includes any dwelling, fenced area, vehicle, railway car, cargo container, or any other structure used for lodging of persons or for carrying on business therein, or for the use, sale or deposit of goods; each unit of a building consisting of two or more units separately secured or occupied is a separate building;

(6) "Deadly weapon" means any explosive or loaded or unloaded firearm, and shall include any other weapon, device, instrument, article, or substance, including a "vehicle" as defined in this section, which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or substantial bodily harm;

(7) "Dwelling" means any building or structure, though movable or temporary, or a portion thereof, which is used or ordinarily used by a person for lodging;

(8) "Government" includes any branch, subdivision, or agency of the government of this state and any county, city, district, or other local governmental unit;

(9) "Governmental function" includes any activity which a public servant is legally authorized or permitted to undertake on behalf of a government;

(10) "Indicted" and "indictment" include "informed against" and "information", and "informed against" and "information" include "indicted" and "indictment";

(11) "Judge" includes every judicial officer authorized alone or with others, to hold or preside over a court;

(12) "Malice" and "maliciously" shall import an evil intent, wish, or design to vex, annoy, or injure another person. Malice may be inferred from an act done in wilful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a wilful disregard of social duty;

(13) "Officer" and "public officer" means a person holding office under a city, county, or state government, or the federal government who performs a public function and in so doing is vested with the exercise of some sovereign power of government, and includes all assistants, deputies, clerks, and employees of any public

officer and all persons lawfully exercising or assuming to exercise any of the powers or functions of a public officer;

(14) "Omission" means a failure to act;

(15) "Peace officer" means a duly appointed city, county, or state law enforcement officer;

(16) "Pecuniary benefit" means any gain or advantage in the form of money, property, commercial interest, or anything else the primary significance of which is economic gain;

(17) "Person", "he", and "actor" include any natural person and, where relevant, a corporation, joint stock association, or an unincorporated association;

(18) "Place of work" includes but is not limited to all the lands and other real property of a farm or ranch in the case of an actor who owns, operates, or is employed to work on such a farm or ranch;

(19) "Prison" means any place designated by law for the keeping of persons held in custody under process of law, or under lawful arrest, including but not limited to any state correctional institution or any county or city jail;

(20) "Prisoner" includes any person held in custody under process of law, or under lawful arrest;

(21) "Projectile stun gun" means an electronic device that projects wired probes attached to the device that emit an electrical charge and that is designed and primarily employed to incapacitate a person or animal;

(22) "Property" means anything of value, whether tangible or intangible, real or personal;

(23) "Public servant" means any person other than a witness who presently occupies the position of or has been elected, appointed, or designated to become any officer or employee of government, including a legislator, judge, judicial officer, juror, and any person participating as an advisor, consultant, or otherwise in performing a governmental function;

(24) "Signature" includes any memorandum, mark, or sign made with intent to authenticate any instrument or writing, or the subscription of any person thereto;

(25) "Statute" means the Constitution or an act of the legislature or initiative or referendum of this state;

(26) "Strangulation" means to compress a person's neck, thereby obstructing the person's blood flow or ability to breathe, or doing so with the intent to obstruct the person's blood flow or ability to breathe;

(27) "Threat" means to communicate, directly or indirectly the intent:

(a) To cause bodily injury in the future to the person threatened or to any other person; or

(b) To cause physical damage to the property of a person other than the actor; or

(c) To subject the person threatened or any other person to physical confinement or restraint; or

(d) To accuse any person of a crime or cause criminal charges to be instituted against any person; or

(e) To expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt, or ridicule; or

(f) To reveal any information sought to be concealed by the person threatened; or

(g) To testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(h) To take wrongful action as an official against anyone or anything, or wrongfully withhold official action, or cause such action or withholding; or

(i) To bring about or continue a strike, boycott, or other similar collective action to obtain property which is not demanded or received for the benefit of the group which the actor purports to represent; or

(j) To do any other act which is intended to harm substantially the person threatened or another with respect to his health, safety, business, financial condition, or personal relationships;

(28) "Vehicle" means a "motor vehicle" as defined in the vehicle and traffic laws, any aircraft, or any vessel equipped for propulsion by mechanical means or by sail;

(29) Words in the present tense shall include the future tense; and in the masculine shall include the feminine and neuter genders; and in the singular shall include the plural; and in the plural shall include the singular.

[2007 c 79 § 3; 2005 c 458 § 3; 1988 c 158 § 1; 1987 c 324 § 1; 1986 c 257 § 3; 1975 1st ex.s. c 260 § 9A.04.110.]

Notes:

Finding -- 2007 c 79: See note following RCW 9A.36.021.

Effective date -- 1988 c 158: "This act shall take effect July 1, 1988." [1988 c 158 § 4.]

Effective date -- 1987 c 324: "Section 3 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately. The remainder of this act shall take effect July 1, 1988." [1987 c 324 § 4.]

Effective date -- 1986 c 257 §§ 3-10: "Sections 3 through 10 of this act shall take effect on July 1, 1988." [1987 c 324 § 3; 1986 c 257 § 12.]

Severability -- 1986 c 257: See note following RCW 9A.56.010.